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IN THE
Supreme Court of the United States

JOSEPH JESNER, ET AL.,
Petitioners,

v.

ARAB BANK, PLC,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF FORMER STATE DEPARTMENT OFFICIALS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

Amici are former State Department officials who have decades of experience working in and studying the Middle East. They have gained a particular expertise on the interests of the United States in the region and on the critical role played by the Hashemite Kingdom of Jordan ("Jordan"). They are as follows:

Ambassador Edward W. Gnehm, Jr. is the Kuwait Professor of Gulf and Arabian Peninsula Affairs at the George Washington University Elliott School of International Affairs.[2] He was the U.S. Ambassador to Jordan from 2001 to 2004. He also served as the Deputy Chief of Mission in Amman from 1984 to 1987. Ambassador Gnehm was a Foreign Service officer for 36 years, with postings in Damascus, Riyadh, Sanaa, and Kuwait. In Washington, D.C., he served as Deputy Assistant Secretary of Defense; Deputy Assistant Secretary of State for the Near East and South Asia; and Deputy Permanent Representative of the United States to the United Nations.

Ambassador Wesley Egan is retired from the Foreign Service, having served as U.S. Ambassador to Jordan from 1994 to 1998 and to Guinea-Bissau from 1983 to 1985. Ambassador Egan spent 29 years with the State Department, serving in Durban, Lisbon,

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represents that it authored this brief in its entirety and that none of the parties or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. A monetary contribution for the preparation and submission of this brief is being made by the National U.S.-Arab Chamber of Commerce. Pursuant to Rule 37.3(a), counsel for *amici* also represents that all parties have consented to the filing of this brief by submitting to the Clerk letters granting blanket consent to the filing of *amicus* briefs.

[2] Affiliations are listed for purposes of identification only.

Lusaka, and Cairo, where he served as Deputy Chief of Mission from 1990 to 1993. He retired in 2000, after serving as the Deputy Inspector General of the State Department.

Ambassador Ronald E. Neumann is retired from the Foreign Service, having served as U.S. Ambassador to Algeria from 1994 to 1997, to Bahrain from 2001 to 2004, and to Afghanistan from 2005 to 2007. He also served as Deputy Assistant Secretary in the Bureau of Near Eastern Affairs from 1997 to 2000, Director of the Office of Northern Gulf Affairs (Iran-Iraq) from 1991 to 1994, and Political-Military Counselor in Baghdad from 2005 to 2005. Ambassador Neumann spent 37 years with the State Department, serving in Dakar, Tabriz, Sanaa, and Abu Dhabi.

Ambassador Robert H. Pelletreau is retired from the Foreign Service, having served as U.S. Ambassador to Egypt from 1991 to 1993, to Tunisia from 1987 to 1991, and to Bahrain from 1979 to 1980. He also served as the Country Director for Arabian Peninsula Affairs from 1981 to 1982, Deputy Assistant Secretary of Defense from 1985 to 1987, and the Assistant Secretary of State for Near Eastern Affairs from 1994 to 1997. Ambassador Pelletreau spent more than 30 years with the State Department, serving in Algeria, Lebanon, Mauritania, Morocco, and Syria, where he served as the Deputy Chief of Mission from 1975 to 1978.

Ambassador Thomas R. Pickering is retired from the Foreign Service, having served as the U.S. Ambassador to Jordan from 1974 to 1978, to Nigeria from 1981 to 1983, to El Salvador from 1983 to 1985, to Israel from 1985 to 1988, to India from 1992 to 1993, and to Russia from 1993 to 1996. He was also U.S. Ambassador and Representative to the United

Nations from 1989 to 1992 and Under Secretary of State for Political Affairs from 1997 until his retirement in 2001. Ambassador Pickering served 40 years in the State Department, including as Assistant Secretary of State for the Bureau of Oceans, Environmental and Scientific Affairs; Executive Secretary of the Department of State; and Special Assistant to Secretaries of State William P. Rogers and Henry A. Kissinger.

Ambassador Nicholas A. Veliotes is retired from the Foreign Service, having served as U.S. Ambassador to Jordan from 1978 to 1981 and to Egypt from 1983 to 1986. He also served as the Assistant Secretary of State for Near Eastern Affairs from 1981 to 1983. Ambassador Veliotes spent more than 30 years with the State Department, serving also in Vientiane, New Delhi, Rome, Naples, and Tel Aviv, where he served as Deputy Chief of Mission from 1973 to 1976.

Ambassador Richard N. Viets is retired from the Foreign Service, having served as U.S. Ambassador to Jordan from 1981 to 1984 and as U.S. Ambassador to Tanzania from 1979 to 1981. Ambassador Viets spent more than 30 years with the State Department, serving in Afghanistan, Japan, India, Romania, and Israel, where he served as Deputy Chief of Mission from 1977 to 1979.

Ambassador Jake Walles is a recently retired Foreign Service officer who served for more than 35 years, including as the U.S. Ambassador to Tunisia from 2012 to 2015 and as Consul General and Chief of Mission in Jerusalem from 2005 to 2009. As Deputy Assistant Secretary of State for Near Eastern Affairs from 2010 to 2012, he oversaw U.S. bilateral relations with Jordan and several other countries in the region. Ambassador Walles also served as senior adviser in

the State Department's Bureau of Counterterrorism from 2015 until his retirement in 2017.

Edward Abington is a retired Foreign Service officer, having spent 30 years in the Middle East. He served in the U.S. Embassies in Tel Aviv, Tunis, Damascus, and Islamabad. In Washington, D.C., he worked on Jordanian and Palestinian affairs, and, during the 1980s, he served as the Acting Director and Deputy Director of the Office of Israeli and Arab-Israeli Affairs. He also served as the U.S. Consul General in Jerusalem. At the time of his retirement from the State Department in 1999, Mr. Abington was the Principal Deputy Assistant Secretary for Intelligence and Research. He subsequently worked from 2000 to 2006 as a consultant to the Palestinian Authority with Bannerman & Associates.

David H. Rundell is a retired Foreign Service officer living in Dubai. From 1983 to 2009, he served seven tours in Saudi Arabia, focusing on a wide variety of political, economic, and counter-terrorism issues as they concerned the U.S.-Saudi relationship. He also spent 4 years working on Arabian Peninsula Affairs at the State Department in Washington, D.C. from 2008 to 2009. Mr. Rundell served as the Chargé d'Affaires and Deputy Chief of Mission in Riyadh.

* * *

Amici are deeply concerned that permitting this lawsuit to proceed against Arab Bank, an institution of critical importance to Jordan and to the entire Middle East, risks undermining the stability of the region and the interests of the United States in combatting terror and furthering peace. *Amici* therefore urge the Court to affirm the judgment of the Second Circuit by applying principles of international comity to restrain the reach of the Alien Tort Statute.

SUMMARY OF ARGUMENT

I. Jordan's role as a moderate and stabilizing influence in the Middle East is critically important to the United States. Not only is Jordan singularly committed and well positioned to lead efforts to address the Palestinian-Israeli conflict, but it has been a leader of international efforts to combat terrorism and its financial support. Having suffered as a victim of terrorist violence itself, Jordan would never permit any institution under its control to support terrorist activities. Arab Bank, Jordan's leading financial institution, has played a critical role in promoting economic stability and security in Jordan and the broader region.

II. International comity requires federal courts to exercise restraint when interpreting the scope of their jurisdiction under the Alien Tort Statute. When recognizing causes of action under that statute, federal courts should take into account "the potential implications for the foreign relations of the United States" and should be "wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 727 (2004). In a case such as this—where foreign plaintiffs have brought claims against a foreign bank for injuries suffered abroad, and where the only connection with the United States is that financial transactions were dollar denominated and cleared through U.S. banks—the presumption against extraterritoriality has not been overcome. The international comity concerns are particularly significant in this case given the district court's order sanctioning Arab Bank for adhering to Jordan's bank-secrecy laws during discovery. Because *amici* are deeply concerned about the impact this case could have on Jordan and

on the United States' interest in promoting moderation and stability throughout the region, we urge the Court to affirm the judgment of the Second Circuit.

ARGUMENT

I. JORDAN'S POLITICAL AND ECONOMIC STABILITY IS CRITICALLY IMPORTANT TO THE UNITED STATES AND IS TIED TO THE SUCCESS AND FINANCIAL VIABILITY OF ARAB BANK

Jordan is a small country—about the size of Indiana—with a population of approximately 8 million people. It has limited natural resources and no oil, and it depends heavily on foreign aid to support its fragile economy. Nevertheless, it is hard to overestimate Jordan's strategic significance to the United States as a force for moderation in one of the most volatile regions of the world. *See* U.S. *Linde* Br.[3] 19 ("The United States relies on Jordan in accomplishing a host of critical security and foreign-policy interests, including combatting terrorism."). For more than six decades, the cordial and mutually beneficial relationship between the United States and Jordan has been founded on important common interests: fighting terrorism, achieving peace and stability in the region, promoting moderation, resolving the ongoing Israeli-Palestinian conflict, and achieving economic progress and prosperity.

This relationship is obviously critical for Jordan. Surrounded by the violence and instability of some of its neighbors, Jordan faces constant threats to its

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[3] *See* Br. for the U.S. as Amicus Curiae, *Arab Bank, PLC v. Linde*, No. 12-1485 (U.S. filed May 23, 2014) ("U.S. *Linde* Br."), https://www.justice.gov/sites/default/files/osg/briefs/2013/01/01/2012-1485.pet.ami.inv.pdf.

security, while it depends significantly on U.S. support and assistance for projects that range from military programs to economic development. U.S. assistance and trade have been vital to Jordan's prosperity since the 1950s, providing economic support aimed at improving the welfare of Jordanian citizens and underscoring the advantages of moderation.

The U.S.-Jordanian relationship has also been important to the United States. Jordan has been a close ally that consistently supports U.S. foreign policy goals in a region where many governments are reluctant to publicly support the United States. Jordan's approach to democracy and reform is a model for many in the Middle East, demonstrating how political reform can take place without violence. Since signing its peace treaty with Israel in 1994, Jordan's engagement on the Israeli-Palestinian issues has been a lynchpin in the United States' ongoing efforts to advance peace in the region.

A. Jordan's Moderate and Stable Role in the Middle East Is a Matter of Critical Strategic Importance to the United States

Throughout its history, Jordan has chosen a path of moderation and constructive engagement, opposing extremism on matters of religion, political and economic reform, and relations with its neighbors. "The United States and Jordan have maintained a mutually-supportive and positive relationship for decades as a result of shared interests in a moderate, prosperous, and stable Middle East." W. Andrew Terrill, *Jordanian National Security and the Future of Middle East Stability* 2 (2008) ("Terrill"), https://ssi.armywarcollege.edu/pdffiles/PUB838.pdf.

Other countries in the region perceive Jordan as nonthreatening and possessing the expertise and

capacity to provide diplomatic and military assistance. For example, immediately after the ouster of Saddam Hussein in Iraq, Jordan established an army field hospital in Fallujah. *See id.* at 27. Jordan carried out similar medical and mine-clearing activities in Afghanistan. *See id.* at 55. In what Ambassador L. Paul Bremer called "the world's largest police training program," Jordan trained approximately 50,000 Iraqi police cadets from 2004 to 2007, working closely with U.S. military and security to construct training camps for Iraqis of different ethnic and religious backgrounds. *Id.* at 27. Jordan's assistance to local citizens in both Iraq and Afghanistan contributed immensely to a better public image of coalition activities.

The Government of Jordan has also taken the lead in promoting religious tolerance, interfaith dialogue, and shared values among cultures. Jordan organized a conference in July 2005 around this theme entitled, "True Islam and its Role in Modem Society." More than 200 Islamic scholars from 50 countries attended. The conference's joint mission statement spoke directly to ending abuses in the Islamic faith.[4] At a time when moderate Islamic voices have seemed weak or nonexistent, Jordan's leadership on this issue has meaningfully advanced the national interest of the United States.

Indeed, the United States has recognized Jordan's singular importance for more than 60 years. Since the mid-1940s, the United States has provided Jordan approximately $19.2 billion in total bilateral economic

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[4] *See The Amman Message*, http://ammanmessage.com; *see also* Sana Abdallah, *Jordan Seeks To Repair Islam's Image*, UPI (July 4, 2005), http://www.upi.com/Jordan-seeks-to-repair-Islams-image/52761120491818/.

and military aid.[5] A key component of U.S. assistance to Jordan is support for Jordan's efforts to promote peace and security in the region. The State Department has recently described Jordan as "a committed partner on counterterrorism and countering violent extremism" and a "regional leader in the Global Coalition to Defeat ISIS."[6]

American assistance builds the capabilities of the Jordanian Armed Forces to participate in international peacekeeping and humanitarian assistance programs. In the United States-Jordan Defense Cooperation Act of 2015, Congress expressly found that "[e]nhanced support for defense cooperation with Jordan is important to the national security of the United States, including through creation of a status in law for Jordan similar to the countries in the North Atlantic Treaty Organization, Japan, Australia, the Republic of Korea, Israel, and New Zealand, with respect to consideration by Congress of foreign military sales to Jordan." Pub. L. No. 114-123, § 2(7), 130 Stat. 117, 117 (2016).

United States assistance to Jordan is not limited to defense and security resources. As Jordan deals with the addition of more than one million Syrian and Iraqi refugees, the U.S. Agency for International Development ("USAID") has provided more than $1.5 billion in direct assistance to improve the water systems, train teachers, and enhance the quality of education

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[5] *See* Jeremy M. Sharp, *Jordan: Background and U.S. Relations* 15 (Cong. Research Serv. 2017), https://fas.org/sgp/crs/mideast/RL33546.pdf.

[6] U.S. Dep't of State, *Country Reports on Terrorism 2016*, PDF at 195 (July 2017), https://www.state.gov/documents/organization/272488.pdf.

in Jordan's schools. According to the Assistant Administrator for USAID's Bureau for the Middle East, this "work in Jordan helps advance the Agency's overall mission to partner to end extreme poverty and promote resilient, democratic societies while advancing our prosperity and security."[7]

These U.S. assistance programs have provided essential support to meet Jordan's basic needs. Jordan depends on this assistance; it would be entirely inconsistent with its national interest to permit any activity within its jurisdiction that would put such assistance in jeopardy.

B. Jordan Is Uniquely Positioned To Play a Constructive Role in Helping To Address the Palestinian-Israeli Conflict

Under the leadership of King Abdullah II, Jordan has actively supported efforts to reach a final peace agreement among Israel, the Palestinians, and the rest of the Arab world. As former Secretary of State Hillary Clinton remarked in 2011, "Jordan's tireless diplomacy has been, and continues to be, indispens[a]ble to this process."[8]

Jordan has a complicated relationship with the Palestinians and the Palestinian cause. In 1948, Jordan fought in concert with other Arab armies against Israeli forces in what was then defined as

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[7] *Jordan: A Key U.S. Partner: Hearing Before the Subcomm. on the Middle East and North Africa of the H. Comm. on Foreign Affairs*, 114th Cong. 17 (2016) (testimony of Paige Alexander), https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg98604/pdf/CHRG-114hhrg98604.pdf.

[8] *Remarks of Secretary Clinton With Jordanian Foreign Minister Nasser Judeh After Their Meeting* (Jan. 26, 2011), https://2009-2017.state.gov/secretary/20092013clinton/rm/2011/01/155388.htm.

Palestine. The resulting ceasefire left Jordan in control of the West Bank of the Jordan River and the eastern part of Jerusalem. Jordan granted citizenship to Palestinian residents of those territories. In fact, Jordan was the only Arab country to grant citizenship to Palestinians displaced in 1948. *See* Terrill at 5. In the June 1967 Six Day War, Israeli forces occupied all the lands west of the Jordan River. As a result of both these wars, a large number of Palestinian refugees fled to territory controlled by the Jordanians, and, today, more than 2.1 million people in Jordan are registered as refugees with the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA").[9]

Jordan also has a complicated relationship with Israel. The two countries share a common border, and they have fought several wars. But, in a landmark event, Jordan and Israel signed a peace treaty in October 1994, ushering in a period of cooperation and exchange, proving that relations between an Arab State and Israel could be mutually beneficial and sustainable. Each state recognized the other and established full diplomatic relations, opening embassies in each country and appointing resident ambassadors. Jordan's security establishment has worked closely with its counterpart in Israel to maintain peace and stability along their shared border.

King Abdullah II has led his country, as did his father, King Hussein, down the path toward peace. He was a staunch supporter and subsequent advocate

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[9] *See UNRWA in Figures* at 1 (June 2017), https://www.unrwa.org/sites/default/files/content/resources/unrwa_in_figures_2017_english.pdf; *see also* Terrill at 6 ("[M]ore than half of Jordan's current population is composed of Jordanians of Palestinian origin, who dominate the private sector of the economy.").

in favor of the Arab Peace Initiative advanced by King Abdullah of Saudi Arabia and unanimously adopted by the Arab Summit Conference in Beirut in 2002. *See* Terrill at 60-61. The Arab Peace Initiative offered Israel peace and full diplomatic and economic relationships with all Arab states in return for the lands occupied by Israel in 1967.[10] King Abdullah II has consistently urged Israel and the Arab states to recognize the opportunities that exist for a complete and final resolution to the Arab-Israeli conflict.[11]

Jordan's treaty with Israel has led to a close working relationship between their respective governments, particularly among the military and intelligence communities. Both countries are committed to their mutual security, and neither would tolerate (let alone support) violence or terrorist activities in the Palestinian Territories. Thus, for example, if Israel were aware of activities based in Jordan that threatened Israel's security or that of its citizens, Israel would have raised the matter with the Jordanians, and the Jordanian Government would have taken immediate steps to stop it.

C. Jordan Has Been at the Forefront of International Efforts To Combat Terrorism

Jordan has been a major strategic partner in the fight against global terrorism from at least the 1970s.

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[10] *See Arab Peace Initiative: Full Text*, The Guardian (Mar. 28, 2002), https://www.theguardian.com/world/2002/mar/28/israel7.

[11] *See* Eric Cortellessa, *Trump Thinks He'll "Be Successful" on Mideast Peace*, The Times of Israel (Apr. 5, 2017) (according to King Abdullah II: "The Arab Peace Initiative . . . offers a historic reconciliation between Israel and the Palestinians, as well as all member states in the Arab League. It is the most comprehensive framework for a lasting peace."), http://www.timesofisrael.com/trump-vows-hell-be-successful-on-israeli-palestinian-peace/.

Jordan's intelligence infrastructure carefully monitors the same groups that threaten both Jordan and the United States. The intelligence communities in both countries exchange information and cooperate in the field, such as in Afghanistan, where Jordan has played a critical role.[12]

The deep feelings of Jordanians toward terrorism and violence were demonstrated dramatically in the immediate aftermath of September 11, 2001. Over the subsequent several days, more than 3,600 Jordanians came to the American Embassy in order to express their grief and condolences, to convey their solidarity with America, and to condemn the perpetrators as murderers and terrorists. Those who came represented all elements of Jordanian society—they were tribal leaders from the desert, Islamic scholars in their religious dress, teachers with their classes of students, ministers in the government, and ordinary people from villages located hours away. Editorials in virtually all Jordanian newspapers—Arabic and English, right and left on the political spectrum—criticized the perpetrators and expressed condolences to the families and friends of the victims.

In the years following September 11, public opinion polls revealed that Jordanians overwhelmingly rejected the argument that it was acceptable to kill innocent people in an attempt to advance a political cause. The Government of Jordan, with enormous support from its citizenry, continued to strengthen its

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[12] *See, e.g., Jordan Sends Trainers to Afghanistan*, UPI (Oct. 6, 2010) ("Amman first acknowledged it[s] counter-terrorism role in Afghanistan earlier this year, shortly after the suicide-bomb attack that killed a senior intelligence officer, who was also a member of the royal family."), http://www.upi.com/Jordan-sends-trainers-to-Afghanstan/51901286393752/.

capacity to thwart terrorist activities in Jordan, and it became one of the first countries in the Middle East to promulgate antiterrorism legislation.

Jordan's efforts do not stop at its own borders. As the United States has noted in its own *amicus* brief, Jordan has played a key role in the global campaign to defeat ISIS. It has conducted regular air missions in Iraq and Syria in coordination with the United States, and it has cooperated fully in measures to thwart terrorist financing and stem the flow of foreign terrorist fighters. *See* U.S. Amicus Br. 31.

Jordan's cooperation internationally in the fight against terrorism is a model of an active and professional partnership, especially with American security organizations. "Jordan is known for one of the most effective intelligence operations in the Middle East, with a network of agents who at times have succeeded in infiltrating rogue operations. The United States has often looked to Jordan for help with information picked up by its intelligence agents."[13]

D. Jordan Has Been a Victim of Terrorism and Would Not Permit Any Institution Under Its Control To Support Terrorist Activities

Jordan has been a victim of multiple, vicious attacks carried out by both al-Qaeda and ISIS terrorists. The most serious al-Qaeda terrorist strike in Jordan came on November 9, 2005, with suicide bombings directed against three large Western chain hotels in Amman, killing 60 people and injuring 115 others. The majority of the victims were attending a wedding at the Radisson for a Jordanian couple of Palestinian origin.

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[13] Hassan M. Fattah & Michael Slackman, *3 Hotels Bombed in Jordan; At Least 57 Die*, N.Y. Times (Nov. 10, 2005), http://www.nytimes.com/2005/11/10/world/middleeast/3-hotels-bombed-in-jordan-at-least-57-die.html?_r=0.

The bride's father and nine other family members died in the attack. *See* Terrill at 42.

More recently, in January 2015, a Jordanian pilot, Lt. Moaz al-Kasasbeh, who had been captured by ISIS when his plane crashed near the city of Raqqa, Syria, was burned alive. Former Secretary of Defense Ashton B. Carter specifically noted that the brutal murder of Mr. Kasasbeh has galvanized the commitment of Jordan and King Abdullah II to the fight against terrorism. "He is all in and a very committed partner. And we are doing everything we can to work with him."[14] King Abdullah II stated recently that success against terrorism "requires our mutual trust as well as our strength. The fight will not be won if we do not recognize our friends as our friends and our enemies as our enemies."[15]

In sum, Jordan's interests lie entirely in opposition to terrorism. Jordan would never permit a domestic environment that fosters, encourages, or even acquiesces in any activity that could undermine its own security and threaten its vital relationships with the United States and Israel.

E. Arab Bank Is a Critical Force for Economic Stability and Security in Jordan and the Broader Region

This lawsuit threatens to impose hundreds of millions of dollars in liability on Jordan's leading financial institution. As Jordan's brief to the Second

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[14] *U.S. Policy and Strategy in the Middle East: Hearing Before the H. Comm. on Armed Services*, 114th Cong. 43 (2015), https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg95315/pdf/CHRG-114hhrg95315.pdf.

[15] *Full Speech of Jordan's King Abdullah II at the Arab Islamic-American Summit*, Arab News (May 22, 2017), http://www.arabnews.com/node/1102976/saudi-arabia.

Circuit emphasized, the country's "economic stability and well-being is tightly linked to Arab Bank." Kingdom of Jordan C.A. Amicus Brief at 2 (filed July 14, 2014). Not only does the Bank's market capitalization represent nearly one-third of the total market capitalization of the Amman Stock Exchange, but the Bank is involved in processing many of the payments associated with government aid programs. According to the United States, Arab Bank "is a constructive partner . . . in working to prevent terrorist financing, including by reporting suspicious financial activities to the government of Jordan, which in turn exchanges information with the United States through international sharing arrangements." U.S. *Linde* Br. 20.

Arab Bank's importance is not limited to Jordan. It maintains branches throughout the Palestinian Territories that provide reliable and secure financial services, providing a significant source of stability in the region. For many years, Saudi Arabia has provided financial and material assistance to the Palestinians; the Israeli government has allowed Saudi aid to cross into the Palestinian Territories and specifically allowed Arab Bank to process fund transfers to thousands of poor Palestinians. Arab Bank is also the means by which other international donors transfer funds to Palestinian relief organizations. Indeed, the Israeli government itself uses Arab Bank to deposit customs and tax revenues for the benefit of the Palestinian Authority.

Jordan took the extraordinary step of filing a brief in this Court in *Linde*, arguing that the sanctions order, which punished Arab Bank for following Jordan's bank-secrecy laws, was "a direct affront to Jordan's sovereignty." Br. of Amicus Curiae the Hashemite Kingdom of Jordan in Support of Petitioner at

14, *Arab Bank, PLC v. Linde*, No. 12-1485 (U.S. filed July 24, 2013), 2013 WL 3830458. A judgment against Arab Bank, after branding it a financier of terrorism, would be devastating not only to the Bank and its shareholders, but also to the stability of the regional economy. As Jordan explained to this Court back in 2013, "[g]iven Arab Bank's prominence, severe reputational and economic harm to Arab Bank also could destabilize the economies of Jordan, the Palestinian Territories, and the surrounding region. Economic instability could in turn lead to political instability, which would disrupt the mutual efforts of Jordan and the United States to broker peace in the Middle East." *Id.* at 18-19.

II. INTERNATIONAL COMITY REQUIRES FEDERAL COURTS TO EXERCISE RESTRAINT WHEN INTERPRETING THE SCOPE OF THEIR JURISDICTION UNDER THE ALIEN TORT STATUTE

This Court should affirm the judgment of the Second Circuit and hold that plaintiffs are seeking an impermissible extraterritorial application of the Alien Tort Statute ("ATS"). Dismissal of petitioners' claims under the ATS is consistent with "those notions of comity that lead each nation to respect the sovereign rights of other nations by limiting the reach of its laws and their enforcement." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 761 (2004) (Breyer, J., concurring in part and concurring in the judgment).

As the Court explained in *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013), the ATS neither regulates conduct nor affords relief; instead, it "allows federal courts to recognize certain causes of action based on sufficiently definite norms of international law." *Id.* at 1664. But, in exercising their authority

to recognize such causes of action, federal courts must guard against the "unwarranted judicial interference in the conduct of foreign policy." *Id.* The Court acknowledged in *Sosa* that "the potential implications for the foreign relations of the United States of recognizing . . . causes [under the ATS] should make courts particularly wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs." 542 U.S. at 727.

This caution is particularly warranted here, in a case involving claims by foreign plaintiffs, against a foreign bank, for injuries suffered abroad, where the only connection with the United States is that, like so many worldwide transactions, the transfers in question were dollar denominated and cleared through U.S. banks. Here, as in *Kiobel*, petitioners' ATS claims do not "touch and concern the territory of the United States . . . with sufficient force" to overcome "the presumption against extraterritorial application." *Kiobel*, 133 S. Ct. at 1669; *see also* U.S. Amicus Br. 28 ("In the context of the ATS, . . . the automated domestic clearance of dollar-denominated transactions in isolation does not in itself constitute a sufficient domestic nexus for recognizing a common-law claim.").

Principles of restraint, such as the presumption against extraterritoriality, serve to protect against discord that could result from unintended clashes between U.S. law and the law of other nations. *See generally* William S. Dodge, *International Comity in American Law*, 115 Colum. L. Rev. 2071, 2102 (2015) (recognizing that "prescriptive comity" operates as a principle of restraint in American law mainly through the presumption against extraterritoriality).

Petitioners' claims threaten to undermine Jordan's sovereignty and economic welfare and to interfere

with U.S. foreign policy interests in Jordan and the Middle East more broadly. This case thus presents a real risk not only of violating the sovereign interests of Jordan and Israel but of compromising U.S. interests in the entire region. "The presumption against extraterritoriality guards against our courts triggering such serious foreign policy consequences, and instead defers such decisions, quite appropriately, to the political branches." *Kiobel*, 133 S. Ct. at 1669.

The international comity concerns here are particularly significant given the district court's sanctions order. The trial court punished Arab Bank for complying with Jordan's bank-secrecy laws during discovery by ruling that it would instruct the jury at trial that it could infer that Arab Bank "knowingly and purposefully" provided financial services to terrorist organizations. *See* U.S. *Linde* Br. 6. As the United States explained three years ago, that order "could undermine the United States' vital interest in maintaining close cooperative relationships with Jordan and other key regional partners in the fight against terrorism." *Id.* at 19. Indeed, the sanctions order has already affected the trial of related claims under the Antiterrorism Act, 18 U.S.C. § 2333,[16] and its effect here—with approximately 6,000 foreign plaintiffs seeking damages large enough to threaten Arab Bank's continued existence—could be devastating.

As the United States has explained, the "unwarranted continuation of petitioners' claims would undercut U.S. foreign policy interests in both direct and indirect ways." U.S. Amicus Br. 32. Where

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[16] *See Linde v. Arab Bank, PLC*, No. 04-CV-2799 (BMC)(PK), ECF No. 1390 (E.D.N.Y. May 24, 2016), *appeal pending*, No. 16-2119 (2d Cir.).

federal courts are tasked with recognizing causes of action for a violation of customary international law—as they are called upon to do under the ATS—"there is a strong argument that [they] should give serious weight to the Executive Branch's view of the case's impact on foreign policy." *Sosa*, 542 U.S. at 733 n.21.

As former Foreign Service officers with extensive experience working in Jordan and elsewhere in the Middle East, *amici* share the United States' profound concern about the impact this case could have on one of our closest allies and on our interest in fostering moderation and stability throughout the region. *Amici* urge the Court to apply the concept of international comity to restrain the extraterritorial reach of the Alien Tort Statute and dismiss this case.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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